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August 11, 1993

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: MM Docket No. 93-178
Howard B. Dolgoff
(File No. BPH-911223ME)

Dear Mr. Caton:

Submitted herewith for filing, on behalf of our client, Howard B. Dolgoff, an applicant in the above-referenced comparative hearing proceeding (MM Docket No. 93-178), are an original and six (6) copies of his Erratum To Petition To Enlarge Issues in the proceeding. Kindly refer this submission to Administrative Law Judge John M. Frysiak.

Please direct any inquiries concerning this submission to the undersigned.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

By: _____
Irving Gastfreund

Enclosures

DOC #12088214

No. of Copies rec'd 0+6
List A B C D E

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In re Applications of	)	MM Docket No. 93-178
HOWARD B. DOLGOFF and	)	File No. BPH-911223ME
MARK AND RENEE CARTER	)	File No. BPH-911224MD
For a Construction Permit For a New FM Radio Station on Channel 292A in Miramar Beach, Florida	)	

TO: Administrative Law Judge John M. Frysiak

ERRATUM TO PETITION TO ENLARGE ISSUES

HOWARD B. DOLGOFF ("Dolgoff"), by his attorneys, hereby respectfully submits his Erratum with respect to the Petition To Enlarse Issues filed by Dolgoff in this proceeding on August 10, 1993.

The purpose of the instant Erratum is to amplify, in certain respects, on the matters contained in Dolgoff's August 10, 1993 Petition To Enlarae Issues and to clarify that Dolgoff is not contending, based on the information presently available to him, that Mark and Renee Carter (the "Carters") lack "reasonable assurance" of their proposed transmitter site at this time, or that the Carters presently lack "reasonable assurance" of a "committed source of funds" to finance their anticipated

construction and first quarter-year operational expenses. The purpose of Dolgoff's Petition To Enlarse Issues was to demonstrate that, at the time of the filing of the Carters' application, the Carters lacked "reasonable assurance" of site availability and lacked "reasonable assurance" of a "committed source of funds" to finance their anticipated construction and first quarter-year operational expenses.

WHEREFORE, the foregoing premises considered, it is respectfully requested that the annexed, revised Petition To Enlarge Issues be substituted in its entirety for the version of the Petition To Enlarae Issues filed by Dolgoff in this

proceeding on August 10, 1993.'

Respectfully submitted,

HOWARD B. DOLGOFF

By: _____
Irving Gastfreund

Kaye, Scholer, Fierman, Hays & Handler
The McPherson Building
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005

His Attorneys

August 11, 1993

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1 In order to avoid any potential prejudice to the Carters, copies of the instant Erratum and its enclosures are being hand-delivered on this date to counsel for the Carters and to counsel for the Mass Media Bureau. Since a copy of Dolgoff's August 10, 1993 Petition To Enlarae Issues was served on the Carters' counsel by mail, the instant Erratum should be received by counsel for the Carters on the same date as his receipt of the August 10, 1993 version of Dolgoff's Petition To Enlarae Issues. Dolgoff would have no objection if the deadline for the filing of a responsive pleading by the Carters with respect to the enclosed, revised version of the Petition To Enlarae Issues were the same date on which a responsive pleading would be due with respect to the August 10, 1993 version of the Petition To Enlarse Issues.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In re Applications of	)	MM Docket No. 93-178
	)	
HOWARD B. DOLGOFF and	)	File No. BPH-911223ME
	)	
MARK AND RENEE CARTER	)	File No. BPH-911224MD
	)	
For a Construction Permit For a New FM Radio Station on Channel 292A in Miramar Beach, Florida	)	

TO: Administrative Law Judge John M. Frysiak

PETITION TO ENLARGE ISSUES

Irving Gastfreund, Esq.

Kaye, Scholer, Fierman, Hays & Handler
The McPherson Building
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005

His Attorneys

August 11, 1993

DOC #12088312

Table of Contents

Summary

A substantial and material question of fact exists as to whether the Carters had a proper factual basis upon which to certify, in their December 24, 1991 application herein, that they had @@reasonable assurance*' of the availability of their proposed transmitter site. Furthermore, a substantial and material question of fact exists as to whether the Carters had a proper factual basis for certifying, in their application, that they were financially qualified. Accordingly, site misrepresentation/lack of candor issues should be designated against the Carters, as well as financial misrepresentation/lack of candor issues.

In addition, the Carters have engaged in abuses of the Commission's process by repeatedly filing frivolous and vexatious pleadings and charges in this proceeding against Dolgoff, without any basis in law or in fact for many of the Carters claims. Accordingly, an abuse of process issue should be designated against the Carters.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In re Applications of	)	MM Docket No. 93-178
HOWARD B. DOLGOFF and	)	File No. BPH-911223ME
MARE AND RENEE CARTER	)	File No. BPH-911224MD
For a Construction Permit For a New FM Radio Station on Channel 292A in Miramar Beach, Florida	)	

TO: Administrative Law Judge John M. Frysiak

PETITION TO ENLARGE ISSUES

HOWARD B. DOLGOFF ("Dolgoff"), by his attorneys, pursuant to Section 1.229(b) of the Commission's Rules, hereby respectfully petitions for the enlargement of issues in this proceeding to include site misrepresentation/lack of candor issues, financial misrepresentation/lack of candor issues, and an abuse of process issue, and related character qualifications issues, against Mark and Renee Carter (the "Carters").[1] In support whereof, it is shown as follows:

I. site Misrepresentation/Lack of Candor Issues

On July 26, 1993, the Carters produced for Dolgoff documents pursuant to Section 1.325(a) of the Commission's Rules (the

[1] This Petition is timely because it is being filed within 15 days following the date (i.e., July 26, 1993), of receipt from the Carters of their Standard Document Production in this proceeding, and within 15 days of the date (i.e., July 26, 1993) following the submission by the Carters of those pleadings which form the basis for Dolgoff's abuse of process issue request.

standardized document production). Under Section 1.325(a)(1)(vi) of the Commission's Rules, the Carters were to have produced "all documents relating to the applicant's proposed transmitter site."

Annexed hereto as Exhibit 1 are photocopies of the only documents produced by the Carters in response to Section 1.325(a)(1)(vi) of the Commission's Rules. The documents in question consist of an option agreement between the Carters and the owners of the transmitter site proposed in the Carters' application (Gregory C. Meyer and Gloria J. Meyer). However, the date of that agreement is May 1, 1992 -- i.e., over four months following the date (i.e., December 24, 1991) on which the Carters filed their above-captioned application with the Commission.

Since the Carters did not produce, in response to Section 1.325(a)(1)(vi) of the Commission's Rules, any other written agreement with the site owners of their proposed transmitter site, or copies of any other correspondence between the Carters and the site owners, or any other documents memorializing conversations or discussions between the Carters and the site owners or their agent prior to the date that the Carters signed their application and certified that they had reasonable assurance of site availability, one must presume that no such other documents exist. If no such other documents exist, one must presume that there was no "meeting of the minds" between the site owners and the Carters with respect to the particular terms

under which the property would be made available for use as a transmitter site, until May 1, 1992, since the terms of the understanding between the site owners and the Carters are most detailed. See Exhibit 1, infra. Given the complexity of the terms contained in the option agreement of May 1, 1992, one would expect that there would have been some memorialization of those terms in a written document once a "meeting of the minds" had been reached. Since it must be presumed that no such documents were in existence prior to May 1, 1992, it appears that there was no "meeting of the minds" with respect to site availability until that date.

Based on all the foregoing, a substantial and material question of fact warranting evidentiary inquiry exists as to whether the Carters had reasonable assurance of the availability of their proposed transmitter site at the time that they certified, in their application (FCC Form 301, Section VII, ¶¶ 2-31, that they did, indeed, have reasonable assurance of the availability of their proposed site. Before an applicant may validly represent to the Commission that it has "reasonable assurance'! of the availability of a site, it must have received a clear indication from the owner of the site or its agent that the owner would be willing to make the site available to the applicant for use as a site. Although reasonable assurance may be acquired in a number of ways, there must be at least a "meeting of the minds" on the underlying terms, resulting in some

firm understanding as to the site's availability. Adlai E. Stevenson IV, 5 FCC Rcd 1588, 1589 (Rev. Bd. 1990); Progressive Communications, Inc., 61 RR 2d 560, 563 (Rev. Bd. 1986). While a legally binding written agreement is not necessary to obtain reasonable assurance, a "mere possibility" that a site will be available will not suffice. William F. and Anne K. Wallace, 49 FCC 2d 1424, 1427 (Rev. Bd. 1976). In Dutchess Communications Corn., 101 FCC 2d 243, 253 (Rev. EM. 1985), the Review Board stated:

> "An applicant cannot merely have vague discussions with a site owner, negotiate no bona fide arrangement, and earnestly represent 'reasonable assurance' of that site... Although no formal written agreement is necessary, the Commission has long held that some firm understanding is essential."

Where a landowner or its agent imposes a specific condition or set of conditions on its approval of site availability, those conditions must be satisfied before reasonable assurance can exist. See Lee Optical and Associated Companies Retirement and Pension Funds Trust, 2 FCC Rcd 5480, 5483-85 (Rev. Bd. 1987); South Florida Broadcasting, Inc., 99 FCC 2d 840, 846 (Rev. Bd. 1984).

In light of the facts set forth above, a substantial and material question of fact exists as to whether there was a "meeting of the minds" which existed, as of the date of certification of site availability by the Carters in their application, with respect to the terms and conditions under which the site owners would be willing to make their property available

to the Carters for use as a transmitter site. Since a substantial and material question of fact exists as to whether the Carters had the requisite factual basis upon which to certify, in December, 1991, that they did, in fact, have reasonable assurance of site availability, a site misrepresentation/lack of candor issue should be designated against the Carters, as well as an issue to determine whether, in light of the evidence adduced, the Carters have the requisite basic qualifications to be Commission licensees.

II. Financial Misrepresentation/Lack of Candor Issues

On July 26, 1993, in response to the standard document production order, and in response to the requirements of Section 1.325(a)(l)(v) of the Commission's Rules, which requires that copies of all bank letters be produced for opposing applicants, the Carters produced for Dolgoff the three documents set forth as Exhibit 2 hereto. The first of those documents is a copy of a December 12, 1991 letter to Mark Carter from Joe R. Miller, Vice President of AmSouth Bank of Florida, in which Mr. Miller merely acknowledges his having met with the Carters on December 12, 1991 "to discuss possible financing needs [emphasis added]" for their proposed station, and in which he expresses the Bank's "interest in discussing" further with Mr. Carter the financing needs of the Carters for their proposed station "once a license is obtained". That letter, obtained by the Carters prior to the filing of their application, contains no specific information which would support

the Carters' certification, in Section III of their application, that they had reasonable assurance of the availability of financing for their proposed station. More specifically, the December 12, 1991 letter does not identify the specific terms and conditions upon which a loan would be made available (e.g., amount of loan, interest rate, collateral requirements, repayment term, etc.).

The only bank **"loan commitment"** letter supplied by the Carters in response to the standard document production **order**[2] was a copy of the annexed July 23, 1993 letter to the Carters from Mark B. Holdbrooks, Assistant Vice President of **AmSouth** Bank of Florida. The July 23, 1993 letter (a copy of which is attached as part of Exhibit 2 hereto) sets forth particular terms and conditions under which the Bank would be willing to make a loan to the Carters, but also contains language that appears to be a mere accommodation to the Carters -- i.e., language to the effect that **AmSouth** Bank of Florida was, on December 12, 1991, willing to make available to the Carters a ioan of up to $250,000 for the purpose of constructing and operating their proposed station. The July 23, 1993 letter appears to be an accommodation to the Carters by stating, with **"20 -** 20 hindsight", that the

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[2] A third letter, dated July 23, 1993, addressed to Mark Carter by the bank's Assistant Vice President was also produced by the Carters, and a copy of that letter is also annexed hereto as part of Exhibit 2. As will be noted from that document, that letter is **not** any type of **"loan commitment"** letter.

bank would have been willing in 1991 to make a loan to the Carters on the specific terms and conditions set forth in the July 23, 1993 letter. However, the July 23, 1993 Bank letter does **not** state that the particular terms and conditions set forth therein were specifically set forth and identified for the Carters in December 1991 and that the Carters and the Bank both agreed to those terms in December 1991.

It is clear that the specific terms and conditions set forth in the July 23, 1993 bank letter were not set forth in writing for the Carters prior to the filing of their application, since any such written document would have been required to be produced under Section 1.325(a)(l)(v) of the **Commission's** Rules, and since no such pre-application document was produced by the Carters. Nor is there any indication by the Carters that they are willing or able to comply with the specific terms and conditions set forth in the July 23, 1993 letter, or that they were willing or able to comply with those terms and conditions prior to their certification in their application that they were financially qualified.

Under these circumstances, a substantial and material question of fact exists as to whether, as of the date that they certified as to their financial qualifications in their application, the Carters had a committed source of funds to construct their proposed station and to finance operations for

three months without additional funds. It should be noted that, under Instruction B for completion of Section III of FCC Form 301, the Commission cautions applicants that, in certifying as to their financial qualifications, "the applicant is also attesting that it can and will meet all contractual requirements, if any, as to collateral, guarantee, guarantees, donations and capital investments." See also Scioto Broadcasters, 5 FCC Rcd 5158, 5160 (Rev. Bd. 1990). Clearly, the Carters could not have properly certified as to this fact in December 1991 if they had no specific and detailed information as to the terms and conditions of the proposed loan from AmSouth Bank of Florida, which were not set forth in writing for them until July 23, 1993.

In Scioto Broadcasters, 5 FCC Rcd 5158 (Rev. Bd. 1990), the Review Board held that, to demonstrate that an applicant has "reasonable assurance" of "committed sources of funds" from a lending institution, the applicant must demonstrate either: (a) that the bank has a long and established relationship with the borrower sufficient to infer that the lender is thoroughly familiar with the borrower's assets, credit history, current business plan and similar data: or (b) that the prospective borrower has provided the bank with such data and that the bank is sufficiently satisfied with this financial information (e.g., collateral guarantees) that, assuming all other things remain the same, a loan in the stated amount would be forthcoming. Id. at 5160. Moreover, the Review Board further required that, in order

to demonstrate that an applicant has "reasonable assurance" of "committed sources of funds" from a lending institution, the applicant must show:

> "... that the borrower is fully familiar with, and accepts the terms and conditions of the proposed loan (e.g., payment period, interest rate, collateral requirements, and other basic terms)."

Id. at 5160.

The Review Board further stated in Scioto Broadcasters as follows:

> "In other words, central to any successful 'reasonable assurance' showing of a loan from a financial institution is that the 'individual qualifications' of the borrower have been preliminarily reviewed . . . [citation omitted] . . . . that adequate collateral has been demonstrated . . . [citation omitted], ... and that the tentative terms of the loan are specifically identified and are satisfactory to both borrower and lender. As noted above, where these fundamentals have been absent in recent cases, the Board has found no 'reasonable assurance'. [Emphasis added.]"

Id. at 5160.

Here, as shown above, there is a substantial and material question of fact as to whether these specific circumstances, demonstrating "reasonable assurance" of "committed sources of funds" were in existence prior to the time that the Carters certified, in their application, that they were financially qualified. In fact, the July 23, 1993 "reasonable assurance" letter from AmSouth Bank of Florida raises significant questions as to whether the particular terms and conditions set forth in that letter were, in fact, specifically identified by the Bank for the Carters prior to the date that their application was executed, and as to whether the Carters, at that time, reached a

"meeting of the minds" with the Bank as to those terms and conditions.

In this connection, the July 23, 1993 bank letter states that the terms of the proposed loan were based, inter alia, "... on review of your FM application". Furthermore, the July 23, 1993, bank letter states that security for the proposed loan would be a "first lien on equipment and a 2nd Mortgage on real estate located at Mack Bayou Road." A substantial and material question of fact exists as to how the bank could have made its loan commitment to the Carters on December 12, 1991 -- i.e., almost two weeks prior to the filing of their application -- on terms which were based, in part, on the bank's review of the Carters' application, which was not filed until almost two weeks later. Bank Letter at 1. Furthermore, a substantial and material question of fact exists as to how the bank could have known, on December 12, 1991, that the Carters would have ownership of their proposed transmitter site on Mack Bayou Road, so as to place them in a position to provide a second mortgage on that real estate to the bank as security for the purported loan. As shown above, and in Exhibit 1 hereto, it was not until May 1, 1992 -- i.e., over four months following the filing of the Carters' application -- that the Carters entered into an option agreement with the owners of the land on Mack Bayou Road specified by the Carters as their proposed transmitter site. These facts make it plain that, notwithstanding suggestions in

the July 23, 1993 bank letter that the bank was willing on December 12, 1991 to make a loan to the Carters on the terms set forth in that letter, it was simply not possible for such terms have been set forth and identified by the bank for the Carters on December 12, 1991, or for the Carters to have reached a "meeting of the minds" with the bank at that time concerning such terms and conditions.

Based on all the foregoing, a substantial and material question of fact warranting evidentiary inquiry exists as to whether the Carters, in their application, have misrepresented facts as to their financial qualifications or have been lacking in candor with respect to such qualifications. Therefore, designation against the Carters of a financial misrepresentation/lack of candor issue and an associated basic character qualifications issue, is warranted. See Scioto Broadcasters, 5 FCC Rcd 5158, 5160 (Rev. Bd. 1990).

III. Abuse of Process Issue

Filed contemporaneously herewith by Dolgoff are his Opposition To Continaent Motion To Enlarge Issues and his Opposition To Countermotion For Partial Summary Decision. Those two pleadings are hereby incorporated herein by reference. As shown therein, the Carters have repeatedly filed frivolous and vexatious pleadings and charges in this proceeding against Dolgoff, without any basis in law or in fact for many of the

Carters' claims; The Commission's processes were not intended to be misused in such a fashion. Accordingly, designation of an abuse of process issue against the Carters is warranted.

In Abuses of the Commission's Processes, 2 FCC Rcd 5563 (1987), the Commission stated:

> "We believe that 'abuse of process' may be characterized as any action designed or intended to manipulate or take improper advantage of Commission process, procedure or rule in order to achieve a result which that process, procedure or rule was not designed or intended to achieve: or to subvert the underlying purpose of that process, procedure or rule . . .."
>
> Id. at 5563.

The Review Board has held

> "Misrepresentation and lack of candor charges are very grave matters. They ought not to be bandied about. The duty to come forward with a prima facie showing of deception is patently strong where a misrepresentation issue is sought. Alabama Citizens For Responsive Public Television, Inc., 73 FCC 2d 615, 46 RR 2d 408 (1979). The petitioner must also make a demonstration of a desire, motive, or logical reason to mislead in order to have an issue added. The Commission will not infer actual or attempted deceptions or improper motives from an enumeration of alleged application errors, omissions, or inconsistencies, accompanied by speculation or surmise but lacking factual support. Garrett, Andrews & Letizia, supra, 86 FCC 2d at 1180, 49 RR 2d at 1007."
>
> Scott & Davis Enterprises, Inc., 88 FCC 2d 1090, 1099 (Rev. Bd. 1982).

Notwithstanding this admonition, in their July 26, 1993 Continaent Motion To Enlarae Issues, the Carters make multiple charges that Dolgoff has engaged in misrepresentation and lacks the requisite character qualifications to be a Commission licensee. As established by Dolgoff in his August 10, 1993,

Opposition To Contingent Motion To Enlarge Issues and his August 10, 1993 Opposition To Countermotion For Partial Summary Decision, the Carters have cavalierly thrown about falsehoods and reckless charges against Dolgoff and have filed pleadings which they either know or should have known were totally lacking in any factual or legal basis.

This type of vexatious pleading strategy is not what the Commission's pleading rules were intended to achieve. It should be noted, in this regard, that, Section 1.52 of the Commission's Rules provides, in pertinent part, as follows:

> "The signature or electronic reproduction thereof by an attorney constitutes a certificate by him that he has read the document; that to the best of his knowledge, information and belief that there is good ground to support it; and that it is not interposed for delay. [Emphasis added.]"

Consequently, the Carters' pleading tactics must be viewed as abuses of the Commission's processes, and, accordingly, an abuse of process and associated character qualifications issue should be designated against the Carters. See Abuses Of The Commission's Processes, supra.

IV. Procedural Burdens And Discovery

In the event that the issues requested above are designated by the Presiding Judge, both the burden of proceeding and the burden of proof on the added issues should be placed on the Carters, pursuant to Section 309(e) of the Communications Act and Section 1.254 of the Commission's Rules. See Modesto Broadcast

Group, 5 FCC Rcd 4674, 4675 n. 3. (Rev. Bd. 1990). Moreover, if the requested issues are added, Dolgoff requests that the Presiding Judge direct the Carters to produce for Dolgoff any and all documents not heretofore produced by them relating to their proposed transmitter site, their certification of site availability and their financial qualifications certification (including, without limitation, all documents supplied by them to AmSouth Bank of Florida in connection with their request that that bank loan to them funds to construct their proposed station and operate it for three months). It is also requested that the Carters produce for Dolgoff copies of any and all documents supporting the pleadings which they have filed against Dolgoff and which Dolgoff has shown are totally lacking in any factual or legal basis.

In addition, the Carters should be compelled to make available for deposition on the requested issues the following individuals: Mark Carter; Renee Carter; Gregory C. Meyer and Gloria C. Meyer (the owners of the Carters' proposed transmitter site): David Kramer (the real estate agent used by the Carters in their dealings with the owners of their proposed transmitter site, as identified in the option agreement annexed hereto as Exhibit 1); Joe R. Miller (former Vice President of AmSouth Bank

of Florida); and Mark D. Holdbrooks (Assistant Vice President of the Sandestin, Florida office of AmSouth Bank of Florida).

Respectfully submitted,

HOWARD B. DOLGOFF

By: _____
Irving Gastfreund

Kaye, Scholer, Fierman, Hays & Handler
The McPherson Building
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005

His Attorneys

August 11, 1993

Exhibit 1

RECEIPT FOR DEPOSIT — OFFER TO PURCHASE — CONTRACT FOR SALE

EMERALD COAST ASSOCIATION OF REALTORS

of South **Okaloosa-Walton Counties, Inc.**

REALTOR® MLS

FOR USE BY MEMBERS ONLY

COPY

DATE 5/1/92

RECEIPT is hereby acknowledged for SEAGROVE ON THE BEACH REALTY, INC. NAME OF COMPANY

a Licensed Real Estate Broker, hereinafter called REALTOR®.

BY DAVID KRAMER. NAME OF AGENT SIGNATURE OF AGENT

THE SUM OF ONE THOUSAND FIVE HUNDRED 00/100 Dollars ($ 1,500.00) check ✓ cash ___ other ___

as an earnest money deposit (EMD)

FROM: MARK & RENEE' CARTER hereinafter called Buyer

on account of offer to purchase the property of MR & MRS. GREGORY MEYER hereinafter called Seller

Said property situated in County of WALTON, State of Florida.

Address: EAST of MACK BAYOU Rd.

Legal Description: EAST 528' of Lot 27., Sec. 27, T2S, R21W

PURCHASE PRICE	$ 80,400.00	**Deferred Pmts
*PLUS ESTIMATED CLOSING COSTS	$ 600.00	Seller to finance #64,320
EQUALS ACQUISITION COSTS (FHA Only)	$ —	for 10 years @ 10% with
PLUS VA FUNDING FEE, FHA MIP OR PMI	$ —	Buyer making 120 equal
PLUS PRE-PAID ITEMS, EXCLUSIVE OF PREPAID INTEREST	$ —	monthly Payments of $850.00
EQUALS TOTAL TRANSACTION PRICE	$ 81,000.00	Note to be secured by A
LESS (FHA/VA/CONV) MORTGAGE LOAN	$ —	Mortgage. No penalty for
LESS ESTIMATED MTG. BALANCE TO BE ASSUMED	$ —	pre payment.
**LESS DEFERRED PAYMENTS TO SELLER	$ 64,320.00	
EQUALS ESTIMATED TOTAL CASH REQUIREMENTS	$ 64,920.00	
LESS EMD RECEIVED (1st Year Lease pymt.)	$ 1,500.00	
LESS ADDITIONAL EMD ON OR BEFORE ___	$ —	
EQUALS ESTIMATED BALANCE DUE AT CLOSING	$ 63,380.00	

$ ___ Estimated Monthly Payment

● 10 % 10 Yrs

*1 a. **DISCLOSURE:** At such time as this transaction is closed, certain sums may be required from the buyer in the form of closing costs. Listed below are the major closing cost items ordinarily found in a transaction. Checked are those items which may be payable pursuant to the contract which you are about to sign. The estimated total of these closing costs and prepaid items to be paid by Buyer (not including prepaid interest) is approximately: $ ___

	To Be Paid By Seller	To Be Paid By Buyer		To Be Paid By Seller	To Be Paid By Buyer		To Be Paid By Seller	To Be Paid By Buyer
Appraisal Fee			Lender's Charges			Discount Points, Mortgage		
Credit Report			Transfer Fee, Mortgage			VA Funding Fee		
Survey	X		Deed/Assmt., Doc Stamps	X		MIP/PMI		
Termite Inspection			Deed Recording Fee		X	Escrow, Taxes, Ins., Etc.		
Home Warranty			Mtg. Note, Doc Stamps		X	Hazard Insurance		
Roof Inspection			Mtg. Intangible Tax		X			
Owner's Title Insurance	X		Mtg. Recording Fee		X			
Mtgee's Title Insurance			Origination Fee, Mortgage					

b. **SEPARATE DISCLOSURES:** Buyer acknowledges receipt of a separate disclosure of agency, agency compensation and radon gas.

2. **PRORATIONS:** All tax assessments for the current year, other assessments, rentals, monthly mortgage insurance premiums, and interest on existing mortgages (if any) shall be pro-rated as of the date of closing. If purchase price includes the assumption of a mortgage with funds in escrow for payment of taxes, insurance, association fees or other charges, the Buyer agrees to reimburse the Seller for said escrow funds assigned to Buyer at closing, with all mortgage payments to be current at the time of closing. (If taxes and other items are not to be pro-rated, specify agreement as to such items.)

STANDARD

3. **IF LOAN BEING APPLIED FOR:** Buyer will make prompt, diligent, and continuing efforts to qualify for said mortgage including furnishing the mortgage company all requested information, affidavits, instruments, statements, etc. incidental to qualifications. After a reasonable time if Buyer is unable to qualify, he shall be refunded his earnest money deposit less all cost incurred on his behalf such as credit report, phone calls, appraisal fee, etc. and all parties shall be relieved of all responsibilities under this contract. A financing addendum has been attached to this contract.

4. **EVIDENCE OF TITLE:** It is recommended that the Buyer obtain for his protection a title insurance policy or an attorney's opinion of title. The Seller is under no obligation to furnish at his expense either an abstract of title, abstract continuation, or title insurance policy unless he so agrees.

5. **EXAMINATION OF TITLE:** The Buyer shall have 15 days from receipt to examine evidence of title. In the event examination proves the title to be unmarketable, the Seller shall have a reasonable period of time within which to cure the designated defects in the title that render the same unmarketable. The Seller hereby agrees to make every diligent effort to clear the title defects. Upon being cured and notice of the fact being given to the Buyer, this transaction shall be closed within 15 days of delivery of notice or as specified in para 12. Upon Seller's failure to correct the unmarketability of the title, at the option of the Buyer, the Seller shall deliver the title in its existing condition. Otherwise the REALTOR, or the Seller, holding the herein mentioned earnest money deposit shall return the same to the Buyer upon demand and shall return the evidence of title to the Seller and all rights and liabilities on the part of the Buyer arising hereunder shall terminate. In the event the Seller is able to furnish a title insurance binder or other evidence of the marketability of title without exceptions other than normal utility easements, current taxes, etc., this shall be proof of the marketability of title and Buyer shall accept said title.

6. **CONVEYANCE:** Conveyance of title shall be by Warranty Deed; Conveyance of leasehold shall be by Assignment. Conveyance shall be free and clear of all encumbrances and liens of whatsoever nature, except as herein otherwise provided. ___

7. **IF NEW HOME TO BE BUILT:** The Seller agrees to cause said dwelling to be completed and ready for occupancy by the Buyer within N/A months from the date of the contract, weather permitting. In the event said dwelling is not completed within the time above specified, the Seller or the REALTOR shall, at the option of the Buyer, refund, to the Buyer the aforementioned earnest money deposit and this contract shall thereupon be null and void. The contract price includes costs of construction loan financing. The Seller agrees to pay any special assessments for improvement bonds on the real property herein described including those payable in the future, for improvements included in the plans and specifications on file. All liens for special assessments or improvement bonds otherwise incurred or imposed shall be paid for by Buyer. It is agreed the final compliance inspection report shall constitute sufficient evidence of completion of the building and other improvements specified in the plans. Insulation has been or will be installed in the new residence per specifications provided by the builder.

8. INSPECTIONS: All heating, air conditioning, electrical, plumbing, appliances and other shall be in working order at the time of closing. Buyer shall satisfy himself as to the _____ in working order of these items prior to closing.

9. SURVEY: If the Buyer desires a survey, the property shall be surveyed at _____ Seller expense prior to closing. If the survey shows an encroachment, the same shall be treated as a title defect.

10. NO REPRESENTATIONS, guarantees, or warranties of any nature whatsoever which are not herein expressed have been made by any party hereto or their representatives. This contract is the only agreement between the parties. Both the Buyer and Seller acknowledge that any other statement, oral or written, is not a material representation on which this contract is based. The Multiple Listing Service (MLS) data should not be relied upon.

11. OCCUPANCY will be given BUYER on _____ Closing. If Buyer takes occupancy before closing, or Seller continues occupancy after closing, it shall be by separate agreement.

12. CLOSING: This transaction shall be closed approximately _____ See Addendum. TIME MAY BE MADE THE ESSENCE of this contract by notice in writing, stipulating a reasonable time for further performance. Any notice necessary under this agreement may be sent by mail to the last known address of the party to be notified.

13. TERMITE CLAUSE: Within _____ N/A days after the date of this agreement at _____ N/A expense, the Buyer shall have the right to have the property inspected by a Florida Certified Pest Control Operator to determine if there is any active termite infestation or visible existing damage from termite infestation in the improvements ("Termites" shall be deemed to include all wood destroying organisms required to be reported under the Florida Pest Control Act.) If either or both are found, Seller shall pay all costs of treatment and repair of said improvements which have been damaged. PROVIDED, HOWEVER, in the event costs to be incurred are more than two percent (2%) of purchase price, the Seller may declare this agreement null and void and all monies deposited will be refunded, or the Seller may offer to convey said property in its present condition with the price reduced by the estimated costs to be incurred. In the event the Buyer refuses to accept said property in its present condition with the purchase price reduced by the estimated costs to be incurred, then the Buyer shall so notify the Broker and Seller, in writing, within _____ N/A days of the offer, and this agreement will be considered null and void and all monies will be refunded. Otherwise, the same shall be in full force and effect.

14. ROOF CLAUSE: Within _____ N/A days after the date of this agreement, at Buyer's expense, Buyer shall have the right to have the roof inspected by a licensed roofer or licensed general contractor to determine whether there is visible evidence of leaks or damage (including fascia and soffit). If either or both are found, Seller shall pay all costs of repairs to said roof. PROVIDED, HOWEVER, in the event the costs to be incurred are more than two percent (2%) of the purchase price, the Seller may declare this agreement null and void and all monies deposited will be refunded, or the Seller may offer to convey said property in its present condition with the purchase price reduced by the estimated costs to be incurred. In the event the Buyer refuses to accept said property in its present condition with the purchase price reduced by the estimated costs to be incurred, then the Buyer shall so notify the Broker and Seller, in writing, within _____ N/A days of the offer, and this agreement will be considered null and void and all monies will be refunded, otherwise, the same shall be in full force and effect.

15. HOME WARRANTY: The Buyer has been offered a Home Warranty Policy. The Buyer (accepts/declines) this coverage. The premium for this protection is to be paid by the (Buyer/Seller). (Agent/Subagent) (will/will not) receive compensation.

16. FAILURE OF PERFORMANCE: If Buyer fails to perform this Contract within the time specified (including payment of all deposits hereunder), the deposit(s) paid by Buyer may be retained by or for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon Buyer and Seller shall be relieved of all obligations under Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If, for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, the Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

17. PAYMENT OF EXPENSES:

a. If this transaction fails to close through no fault of Seller, all loan and sales processing and closing costs incurred, whether the same were to be paid by Seller or Buyer, shall be the responsibility of Buyer, and the costs shall be deducted from the binder deposit. (This shall include but not be limited to: the transaction not closing because Seller elects not to make a mortgage loan to Buyer after evaluating Buyers credit, employment and financial information; Buyer is unable to obtain the required third party financing as provided for in this Agreement; or Buyer breaches this Agreement.)

b. If this transaction fails to close through no fault of the Buyer, all loans and sales processing and closing costs incurred, whether the same were to be paid by Seller or Buyer, shall be the responsibility of Seller; and Buyer shall be entitled to the return of the binder deposit. (This shall include but not be limited to: the transaction not closing because Seller is unable or unwilling to complete the transaction for a qualified Buyer; the property does not appraise for an amount sufficient to enable the lender to make the required loan; Seller cannot deliver a marketable title; or Seller breaches this agreement.)

18. ATTORNEY FEES OR COSTS: In any action arising out of this Contract, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

19. TYPEWRITTEN OR HANDWRITTEN PROVISIONS inserted in this form shall supersede any and all printed provisions in conflict therewith.
SPECIAL PROVISIONS:

See Addendum – Attached

Subject to Buyers Attorney Reviews & Approval

20. MEDIATION CLAUSE: Any dispute or claim arising out of or relating to this contract, the breach of this contract or the services provided in relation to this contract shall be submitted to mediation in accordance with the Rules and Procedures of the Homesellers/Homebuyers Dispute Resolution System. Disputes shall include representations made by the Buyer, Seller or any Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this contract pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

By initialing in the space below, you hereby acknowledge that you have received, read and understand the standard announcement brochure for the Homesellers/Homebuyers Dispute Resolution System and agree to submit disputes as described above to mediation.

Buyer's Initials _____ Seller's Initials _____

TIME FOR ACCEPTANCE; EFFECTIVE DATE: If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or before, May 10, 1992 the deposit(s) will, at Buyer's option, be returned to Buyer and the offer withdrawn.

The date of this contract ("Effective Date") will be the date when the last one of the Buyer and the Seller has signed this offer.

WITNESS: BUYER: I (we) have read this contract prior to signing it.

_____ _____ (SEAL)

_____ _____ (SEAL)

I, (we), agree to sell the above mentioned property to the above named Buyer or his Nominee on the terms and conditions stated in the above instrument and by the signature attached on the 18 day of May 19 92 signify our acceptance and approval of the proposed sale.

WITNESS: SELLER: I (we) have read this contract prior to signing it.

_____ _____ (SEAL)

_____ _____ (SEAL)